

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMMITT GRIER, JR.,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-05 Erie
)	
ERIE COUNTY DISTRICT ATTORNEY,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on January 6, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The case is now before us on remand from the United States Court of Appeals for the Third Circuit. See Mandate dated February 4, 2010 (Doc. 80). Presently pending are cross motions for summary judgment.

The Magistrate Judge's report and recommendation ("R&R"), filed on September 19, 2011, recommended that the Plaintiff's Motion for Summary Judgment (Doc. 95) be granted and that Defendants' Motion for Summary Judgment (Doc. 99) be granted to the extent that the Commonwealth of Pennsylvania be dismissed from this action, but denied in all other respects.

The parties were allowed fourteen days from the date of service to file written objections to the R&R, and any party opposing the objections was allowed fourteen days from the date of service of objections to respond thereto. Defendants' objections were filed on October 3, 2011 (Doc. 115) and Plaintiff's Opposition to the Defendants' objections (Doc. 116) were filed on October 17, 2011.

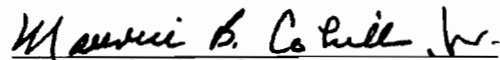
After de novo review of the pleadings, briefs and documents in the case, together with the report and recommendation, objections and opposition to the objections, as well as a

transcript of the oral argument held before Magistrate Judge Baxter on May 18, 2011 (Doc. 115-2), the following order is entered:

AND NOW, this 1st day of October, 2011, IT IS HEREBY ORDERED that the Report and Recommendation of Magistrate Judge Baxter, dated September 19, 2011 (Doc. 113), is ADOPTED as the Opinion of the Court. Plaintiff's motion for summary judgment (Doc. 95) is hereby GRANTED. The Defendants' motion for summary judgment (Doc. 99) is hereby granted in part, and defendant Commonwealth of Pennsylvania is DISMISSED from this action; the motion for summary judgment is denied in all other respects.

IT IS FURTHER ORDERED THAT Defendants shall produce for analysis any biological evidence relating to the crimes prosecuted in the Court of Common Pleas of Erie County, Criminal Division, as Case Nos. 2646 of 1999, 2647 of 1999, and 2648 of 1999, including, but not necessarily limited to, evidence collected in the rape kits performed during the investigation of the crimes prosecuted as Case Nos. 2646 and 2648 of 1999, as well as any biological evidence taken from or offered by Plaintiff for comparison purposes.

IT IS FURTHER ORDERED that no later than thirty days from the date of this Order, the parties shall agree on procedures for the analysis of the evidence subject to this Order and shall submit for the Court's approval a proposed plan detailing the chain of custody to be followed, the laboratory that will perform the testing and the testing method to be applied, payment for the testing, and such other issues that either party things necessary for the enforcement of this Order and appropriate for the Court's review. This Court shall retain jurisdiction over the above-captioned matter for purposes of enforcing this Order and the plan for testing that it ultimately approves.


MAURICE B. COHILL, JR.
United States District Judge

cc: Hon. Susan Paradise Baxter
all parties of record _____